

COVID-19 BUSINESS GRANT AGREEMENT

THIS BUSINESS GRANT AGREEMENT (the “**Agreement**”) is made and entered into on this _____ day of _____, 2021 (the “**Effective Date**”), by and between the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “**City**”) and **JACKSONVILLE SYMPHONY ASSOCIATION, INC.**, a Florida not-for-profit corporation, whose address is 300 W. Water Street, Ste. 200, Jacksonville, Florida 32202 (“**Recipient**”).

RECITALS:

WHEREAS, pursuant to City Ordinances 2020-235-E and 2020-378-E, the City appropriated approximately \$167,120,186.00 of Coronavirus Aid, Relief and Economic Security (“**CARES**”) Act grant funding to fund various grants and other programs designed to provide economic relief and assistance to individuals and businesses in Duval County, Florida; and

WHEREAS, pursuant to Ordinance 2021-__-E (the “**Appropriation Ordinance**”), the City reappropriated \$19,900,000.00 in unexpended CARES Act grant funds to provide economic relief and assistance to various businesses and programs as set forth in the Appropriation Ordinance; and

WHEREAS, Recipient has applied to the City to receive a portion of the reappropriated CARES Act funds to assist Recipient in recovering from the negative economic impacts of the COVID-19 pandemic; and

WHEREAS, pursuant to the Appropriation Ordinance, the City has determined the economic assistance to Recipient as set forth herein is necessary to assist Recipient in recovering from the negative economic impacts of the COVID-19 pandemic and to maintain the viability of Recipient and its employee base and therefore the City has appropriated and hereby provides a COVID-19 Business Relief Grant to Recipient in the amount of \$1,000,000.00 (the “**Grant Funds**”) pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. INCORPORATION OF RECITALS

The above stated recitals are accurate and by this reference made a part this Agreement.

II. GENERAL CONDITIONS

A. Recipient agrees to do as follows:

1. To accept the Grant Funds as appropriated in accordance with the terms of this Agreement, Ordinances 2020-235-E and 2020-378-E, and the Appropriation Ordinance.

2. To abide by Chapter 119, Florida Statutes, as amended from time to time, a copy of which can be obtained by Recipient online at <http://www.leg.state.fl.us/Statutes/>, which by this reference is made a part of this Agreement. All documents not expressly exempt from the Public Records Act relative to this Agreement and the Grant Funds are considered to be public records as defined in said Chapter 119, Florida Statutes; and

3. To obtain permits, as may be required, from the State of Florida and the City of Jacksonville and abide by all applicable state laws and local ordinances, as from time to time amended; and

4. To return to the City within fifteen (15) days of written demand all Grant Funds paid to Recipient under the terms of this Agreement upon the City finding that Recipient has violated the terms of this Agreement, the provisions of Ordinance 2020-235 or 2020-378-E, or the related CARES Act, or the provisions of the Appropriation Ordinance; including, but not limited to, making expenditures that are specifically disallowed by this Agreement or the CARES Act. Recipient may utilize funds for economic losses it has suffered related to the COVID-19 pandemic, from the period of March 1, 2020 through November 30, 2021.

5. Recipient shall not utilize Grant Funds for any of the following categories:

- i) contributions to a contingency reserve or a similar provision for unforeseen events.
- ii) costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation and gratuities.
- iii) costs resulting from violations of or failure to comply with federal, state and local laws and regulations.
- iv) the salaries and costs of the office of the governor of a state or the chief executive of a political subdivision. These costs are considered a cost of general state or local government.
- v) the salaries and other costs of the Legislature or similar local governmental bodies such as County commissioners, City councils and school boards, whether incurred for purposes of legislation or executive direction.
- vi) Non-cash Expenses as defined in [Section 118.104](#), *Ordinance Code*.
- vii) Costs of any audits required under this Agreement.

6. Recipient consents to:

i) Such audits of Recipient's financial affairs by the Department, the Council Auditor's Office, the Office of Inspector General, the State of Florida or the United States Government may require as they relate to the Grant Funds; and

ii) Producing all documents required by the Department or the Council Auditors, the City's Ethic's Office or the Office of Inspector General. Recipient agrees to give the City complete

and unfettered access to all records regarding Grant Funds provided under this Agreement, at all times, during regular business hours, to ensure the Grant Funds are properly spent; and

iii) By no later than December 15, 2021, Recipient shall furnish to the City a final report of expenditures of the Grant Funds in such form as the Finance and Administration Department, Office of Grants and Contract Compliance shall prescribe. This report shall be certified as to its accuracy by the Financial Officer/Treasurer of Recipient's organization. This report shall include the time period from the Effective Date of this Agreement until all of the Grant Funds have been expended by Recipient. The reporting obligation set forth in this paragraph shall survive the expiration or earlier termination of this Agreement.

7. Recipient's violation of any of the provisions contained in this Agreement, including the failure to adhere to the reporting requirements of this Agreement or any applicable code or statutory provision, whether or not incorporated into this Agreement, shall be a material breach and may result in immediate termination of this Agreement and Recipient's return of all Grant Funds granted by this Agreement.

III. EFFECTIVE DATE/TERM OF AGREEMENT

This Agreement is effective as of the Effective Date and shall continue in effect as to all its provisions, terms, and conditions until the earlier of the expenditure by Recipient of all Grant Funds received, or December 15, 2021. Any Grant Funds not disbursed by November 30, 2021 shall be returned to the City.

IV. PAYMENT

The City agrees to pay Recipient Grant Funds in an amount not to exceed One Million and No/100 Dollars (\$1,000,000.00) within five (5) business days of the Effective Date of this Agreement. This amount constitutes the maximum indebtedness of the City pursuant to this Agreement, and the only obligation of the City hereunder. The CFDA number of the grant authorized by this Agreement is 21.019. The federal award ID number is _____. The Federal awarding agency for the grant authorized hereunder is the Department of the Treasury.

V. RECORDS

A. By the acceptance of the Grant Funds, Recipient agrees to adhere to all provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), with respect to the receipt, expenditure, and use of public funds from the City. Therefore, except to the extent prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a copy of which can be obtained by Recipient online at <http://www.cms.gov/HIPAAGenInfo/>, which regulations are incorporated herein by reference, as applicable, all the financial, business, and membership records of the person, corporation, foundation, trust, association, group, or organization, relative to the grant shall be public records and subject to the provisions of the Public Records Law. Recipient's failure to comply with this requirement will constitute a breach of this Agreement and may result in cancellation of this Agreement and refund to City of the Grant Funds.

B. Recipient shall maintain financial and accounting records and conduct transactions in accordance with generally accepted accounting principles, Florida Statutes, and the requirements

of the City's *Ordinance Code*. These financial records shall be maintained in a manner permitting positive and ready identification of any Grant Funds received by Recipient from the City from the time such funds are actually received by Recipient until the time they are actually expended or disbursed by Recipient according to the terms of this Agreement.

C. In addition to other requirements specified in this Agreement, Office of Management and Budget (OMB) Circulars, including A-102, A-87, A-110, A-122, A-133 and A-21 and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance), may be used as a guide concerning records to be maintained. The aforesaid records shall be made available for audit, copying or inspection purposes at any time during normal business hours and as often as the City or the City of Jacksonville Council Auditor may deem necessary.

D. Recipient shall retain for such inspection all of its records and supporting documentation applicable to this Agreement for five (5) years after disbursement of the Grant Funds to Recipient.

VI. AUDIT

A. Upon the request of the City, Recipient shall obtain and provide to the City a copy of the latest available audited financial statements of the Recipient. Upon the request of the City, or if the Recipient expends more than \$750,000 of Federal grant expenditures (inclusive of any Federal funds disbursed to Recipient apart from those authorized by this Agreement) during its fiscal year, Recipient shall obtain and provide to the City an original independent single audit conducted in accordance with both GAAS and Government Auditing Standards ("GAS") issued by the Comptroller General of the United States; and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), of its financial affairs for its fiscal year ending within the current City fiscal year. Such report shall be made by an independent certified public accountant. If requested, such report shall be due within 120 days of the close of Recipient's fiscal year. This Paragraph shall survive the expiration or earlier termination of this Agreement for a period of five (5) years from the date of expiration or termination.

B. The following audit requirements are in addition and supplemental to other audit requirements in this Agreement:

1. Recipient shall establish and maintain books, records, contracts, subcontracts, papers, financial records, supporting documents, statistical records, goods, services, and all other documents (the "**Records**") in a format sufficient to reflect all receipts and expenditures of the Grant Funds.

2. Recipient shall retain all Records pertinent to this Agreement for a period of five (5) years after disbursement Grant Funds. If an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the Records shall be retained, at no cost to the City, until resolution of the audit findings or any litigation based on the terms of this Agreement. Records shall be retained for longer periods when any retention period required by law exceeds the time frames required in this paragraph.

3. Upon demand, at no additional cost to the City, Recipient shall facilitate the duplication and transfer of any Records during the applicable retention period.

4. Recipient shall provide the Records at all reasonable times for inspection, review, copying, or audit by the City.

5. At all reasonable times for as long as Recipient maintains the Records, Recipient shall allow persons authorized by the City to have full access to and the right to examine any of the Records, regardless of the form in which kept.

6. Recipient, at its cost, shall provide audits or reports as requested by the City, and shall insure that all related party transactions are disclosed to the auditor.

7. Recipient shall comply and cooperate immediately with any inspections, reviews, or investigations deemed necessary by the City's Contract Administrator who for the purposes of this Agreement will be Kendra Mervin, Grant Administrator.

8. Recipient shall permit the City to interview any of Recipient's employees, subcontractors, and subcontractors' employees to assure the City of the satisfactory performance of this Agreement. Following such review, if Recipient's performance is, in the opinion of the City, deficient, the City will deliver to Recipient a written report of the deficiencies and request for Recipient's development of a corrective action plan. Recipient agrees to prepare and submit to the City a corrective plan within five (5) business days of receiving the City's written report. Recipient shall correct all deficiencies identified in the corrective action plan within five (5) business days from the City's receipt of the corrective action plan.

9. All reports, audits, and other information Recipient provides pursuant to this Section shall contain the following statement: "**The information provided to the City of Jacksonville in this submittal is submitted under penalties of perjury, under Section 837.06, Florida Statutes**".

10. If Recipient uses any contractors or subcontractors in utilization of the Grant Funds, Recipient shall include the audit, inspections, investigations, and record-keeping requirements of this Agreement in all such subcontracts and assignments.

11. Recipient shall comply with all CARES Act requirements, including but not limited to, 2 Code of Federal Regulations 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as applicable. Recipient acknowledges the City must comply with the sub-recipient monitoring requirements of 2 CFR 200.331 and at the request of the City agrees to provide such additional information and documentation to the City as required to comply with such requirements. Recipient also acknowledges that payments under this Agreement are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding sub-recipient monitoring and management, and subpart F regarding audit requirements.

VII. NOTICE

Any notice required to be given under this Agreement shall be by certified mail, return receipt requested, or by hand delivery with a written receipt. Notices shall be deemed effective upon receipt or three (3) days after posting of certified mail. Notices shall be delivered to:

For the City:

City of Jacksonville
Office of Grant and Contract Compliance
214 N. Hogan Street, 10th Floor
Jacksonville, Florida 32202
Attn: Kendra Mervin, Grant Administrator

For Recipient:

Jacksonville Symphony Association, Inc.
300 W. Water Street, Suite 200
Jacksonville, Florida 32202
Attn: Steven Libman, President

VIII. CIVIL RIGHTS

A. There will be no discrimination against any employee or person served on account of race, color, sex, age, religion, ancestry, national origin, handicap, marital status, citizenship status, creed, sexual orientation, gender identity, disability, veteran status, or any other protected status under federal, state, or City law, or under Recipient's corporate policies in the performance of this Agreement, or distribution of Grant Funds to individuals negatively impacted by the COVID-19 response measures.

B. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) in regard to the persons served.

C. Recipient shall comply with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e) in regard to employees or applicants for employment.

D. Recipient shall comply with Section 504 of the Rehabilitation Act of 1973 in regard to employees or applicants for employment and clients served.

E. Recipient shall comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) in regard to employees and persons served.

F. If City receives evidence of discrimination in violation of this Agreement, the City may terminate this Agreement and Recipient shall return the Grant Funds to the City upon written demand therefore.

IX. NON-DISCRIMINATION

Recipient shall not discriminate, directly or indirectly, on the grounds of race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, sex, age or political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions, and related terms and conditions of employment. Recipient shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause. Recipient shall incorporate this provision in all subcontracts for the services provided under this Agreement.

X. OTHER CONDITIONS

Recipient shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, as amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Open Meetings Law). Such laws, rules, regulations, and ordinances also include, but are not limited to, the applicable requirements for licenses and certifications necessary in connection with any activity arising out of expenditure of the Grant Funds. If any of the obligations of this Agreement are to be performed by a subcontractor or subrecipient, the provisions of this Section shall be incorporated into and become a part of such subcontract or subrecipient contract.

XI. REPRESENTATIONS/WARRANTIES AND UNAUTHORIZED WORKERS

A. As a material inducement for City to enter into this Agreement, Recipient warrants (and unless otherwise specified, the warranties shall remain true during the term of this Agreement) that:

1. Recipient is a Florida business entity with offices in Duval County incorporated and validly existing under the laws of the State of Florida and authorized to conduct business and in good standing in the State of Florida, or Recipient has tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. Recipient has authority to enter into this Agreement and all documents contemplated by this Agreement, and to perform its obligations arising under this Agreement and other documents contemplated by this Agreement. The individuals signing on behalf of Recipient have authority to do so.

2. Recipient's execution of this Agreement and performance of its obligations under this Agreement have been duly authorized and approved by the shareholders, members, partners, or directors of Recipient (as the case may be).

3. This Agreement and all documents contemplated by this Agreement each constitute a legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms.

4. This Agreement and all documents contemplated by this Agreement do not and will not contravene any provision of the governing documents of Recipient, any judgment, order, decree, writ, or injunction by which Recipient is bound, or any provision of any applicable law or

regulation by which Recipient is bound. The execution of this Agreement and all documents contemplated by this Agreement, and performance of the obligations of this Agreement and other contemplated documents, will not result in a breach of or constitute a default under any agreement to which Recipient is a party or require consent from any third party.

5. Recipient holds all necessary licenses, permits, and authorizations required by applicable governmental bodies as a condition to conduct business in the State of Florida and in the City of Jacksonville.

6. Recipient has not employed or retained any third party having a relationship with City to solicit or secure this Agreement and has not paid or agreed or promised to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this Agreement.

7. Recipient is not in default under any agreement with City, and Recipient has satisfied all conditions imposed by any governmental authority in connection with provision of the Services.

B. The employment by Recipient of unauthorized aliens is a violation of Section 274A(e) of the Federal Immigration and Naturalization Act and a material breach of this Agreement, and City may unilaterally cancel this Agreement upon thirty (30) days' prior written notice of such cancellation.

C. If Recipient has a religious affiliation, Recipient acknowledges, represents and warrants that all Grant Funds are ineligible to be used for religious purposes, and shall only be disbursed to support community programming of Recipient negatively impacted or made necessary by COVID-19 response measures, such as food distribution, rent and mortgage assistance, day care, and such other community programming in Duval County, and that such programming shall not discriminate among recipients based upon religion.

XII. INDEMNIFICATION

See Exhibit A attached hereto and incorporated herein for the indemnification obligations of Recipient.

XIII. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement contains the entire agreement between the parties with respect to the receipt and expenditure of the Grant Funds. Any amendment to this Agreement must be in writing and duly executed by the parties hereto. This Agreement may be signed in counterparts, including by electronic signature, the counterparts and signatures of which, when taken together, shall constitute but one Agreement.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement on the day and year first above written.

**JACKSONVILLE SYMPHONY
ASSOCIATION, INC.**

By: _____
Steven Libman, President/CEO

[City of Jacksonville Signatures Follow on Next Page.]

CITY OF JACKSONVILLE, *a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida*

ATTEST:

By: _____
James R. McCain, Jr.,
As Corporation Secretary

By: _____
Lenny Curry, as Mayor

Encumbrance and funding information for internal City use:

Amount.....\$1,000,000.00

In accordance with Section 24.103(e), of the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Agreement. Actual encumbrance(s) shall be made by subsequent purchase order(s) as specified in said Agreement.

Director of Finance
City Contract # _____
Purchase Order # _____

FORM APPROVED:

By: _____
Office of General Counsel

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EXHIBIT A

Indemnification

Recipient and its subsidiaries (“Indemnifying Party(ies)”) shall hold harmless, indemnify, and defend the City of Jacksonville and City’s members, officers, officials, employees and agents (collectively, the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, Services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operations, Services or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, any products generated by the Services, or any part of the Services, are held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the disputed part of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the Indemnified Parties so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Agreement, the Indemnifying Party will: (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.** In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.